



April 3, 2019

The Honorable Nita Lowey  
Chairwoman  
Committee on Appropriations  
H-307, the Capitol  
Washington, DC 20515

The Honorable Kay Granger  
Ranking Member  
Committee on Appropriations  
1016 Longworth House Office Building  
Washington, DC 20515

The Honorable José Serrano  
Chairman  
Subcommittee on Commerce, Justice, Science  
H-310, the Capitol  
Washington, DC 20515

The Honorable Robert Aderholt  
Ranking Member  
Subcommittee on Commerce, Justice, Science  
1016 Longworth House Office Building  
Washington, DC 20515

**Re: Opportunities to Improve Public Safety and Build Trust Between Police and Communities  
Opportunities to Reduce Incarceration and Reverse Harmful Policies**

Dear Chairwoman Lowey, Chairman Serrano, and Ranking Members Granger and Aderholt,

We write to you on behalf of a coalition of organizations committed to advancing constitutional policing practices that build trust between law enforcement and community and increase public safety for all communities. We have reviewed the President's Budget Request for Fiscal Year 2020 (FY20) and offer several recommendations based on our priorities for the upcoming fiscal year.

**Opportunities to Improve Public Safety and Build Trust Between Police and Communities**

In fiscal year 2020, Appropriators have the opportunity to make investments in Department of Justice programs that promote a fair criminal legal system. They also have the opportunity to provide direction to the Department to ensure it fulfills its requirements under the law.

***Second Chance Act***

We support increased funding for Second Chance Act programs. In prisons and jails across the country, almost 2.2 million people are incarcerated—nearly 1 in every 150 U.S. residents.<sup>1</sup> African American residents are imprisoned at higher rates than their white counterparts.<sup>2</sup> At least 95 percent of people incarcerated in state prisons will be released back to their communities at some point,<sup>3</sup> yet research suggests that as many as 40 percent will be reincarcerated within three years of their release.<sup>4</sup> Helping individuals to access the services they need for reentry to rebuild their lives will help reduce recidivism, strengthen families and communities, and improve public safety. The programs authorized by the Second Chance Act address the wide array of issues that research has shown to improve reintegration and reduce recidivism, including education and job training; employment and housing services; treatment for substance use disorders and mental illnesses; and mentoring programs.

***Comprehensive Opioid Abuse Program***

In 2017, over 70,000 Americans died from drug overdoses.<sup>5</sup> We need comprehensive health and prevention approaches to the overdose crisis rather than just enforcement-only approaches. The Comprehensive Opioid Abuse Program (COAP) helps tackle addiction and overdoses without resorting to mass incarceration. Congress should increase funding for COAP.

### ***Treatment in the Criminal Legal System***

As our country seeks to address the overdose crisis, it is important that we use every available tool to reduce fatal overdoses. This must include expanding access to medication-assisted treatment (MAT), which provides reliable treatment options and ultimately save lives. Despite efforts to expand access to MAT more broadly, insufficient attention has been paid to incarcerated individuals, who are more likely than the general population to suffer from a substance use disorder and have limited access to treatment. One critical way that we can help tackle the opioid epidemic is to improve access to MAT in the criminal justice system. Accordingly, we request that you provide robust funding in the final FY20 Commerce, Justice, and Science Appropriations bill for all forms of MAT in federal prisons and state correctional facilities. Congress should award funding for BOP to do all forms of MAT inside prison and at the point of reentry and carve out funds from the RSAT program for states and local jails to also offer all forms of MAT.

### ***Consent Decrees and Settlement Agreements***

Former Attorney General Jeff Sessions worked to overturn consent decrees and settlements the Department entered into with local law enforcement and other state and local agencies.<sup>6</sup> These consent decrees have been vital in reducing unconstitutional policing practices and fostering communities' trust in their police. We believe Congress should direct the Department to continue their enforcement, and would request the following report language under "Department of Justice, Salaries and Expenses, General Legal Activities:"

***Consent decrees and settlements.*** —The Committee notes the importance of DOJ's obligation to enforce settlements and consent decrees negotiated under civil rights statutes, including but not limited to the Civil Rights Act of 1964, the Voting Rights Act of 1965, the Fair Housing Act of 1968, and the pattern or practice investigations provisions under the Omnibus Crime Control and Safe Streets Act of 1968 and the Violent Crime Control and Law Enforcement Act of 1994. The Committee directs the Department to enforce all consent decrees and settlements negotiated under any civil rights statute vigorously and directs the Department to report not later than 90 days after enactment of this Act on the status of its enforcement efforts.

### ***Death in Custody Reporting Act***

In 2014, Congress passed the Death in Custody Reporting Act (DICRA). This bipartisan law requires state and local law enforcement to report information on deaths of people in their custody to the Justice Department. Unfortunately, the Department has yet to issue any final guidance on DICRA as required by statute, delaying implementation until at least FY 2020. We request the following report language under "Department of Justice, State and Local Law Enforcement Activities, Research, Evaluation, and Statistics" to direct the Department to implement and enforce data collection on deaths in custody at once:

***Death in Custody Reporting Act.*** —The Committee is extremely disappointed that the Department seeks to delay implementation of the Death in Custody Reporting Act of 2013 (DICRA; Public Law 113–242) until at least fiscal year 2020, having failed to issue compliance guidelines as required by statute. The Committee reminds the Department of its legal obligations under DICRA and directs the Department to implement the compliance guidelines published in the *Federal Register* on December 19, 2016, immediately. The Committee also directs the Bureau of Justice Statistics to prioritize funding for DICRA implementation.

### ***Opportunities to Reduce Incarceration and Reverse Harmful Policies***

Recognizing overall budget uncertainty, we believe there are areas where Congress should suspend funding until there is proper congressional oversight and instead fund the programs previously described that promote a fair criminal legal system, invest in communities, and advance rights-respecting policing.

### ***Project Safe Neighborhoods***

We oppose the President's budget request of \$100,000,000 for, and support suspension of, the Project Safe Neighborhoods (PSN) program, until an oversight hearing is done on this program by the House Judiciary Committee. The PSN program promotes an outdated view of criminal justice:<sup>7</sup> that the only way to reduce crime is through imposing harsh mandatory minimum sentences.<sup>8</sup> The program encourages localities to have U.S. Attorneys prosecute local crime in the federal courts and incarcerate offenders in federal prisons. This diverts resources away from tackling crime solely within the jurisdiction of the federal government and it challenges constitutional principles of federalism.

### ***COPS Hiring Program***

We support suspension of the COPS Hiring Program until an oversight hearing is done on this program by the House Judiciary Committee. Created with the goal of hiring 100,000 local police officers, the COPS program has outlived its purpose and contributes to the epidemic of mass incarceration that has devastated communities across the nation. Since its inception, the COPS program has billions of dollars for a purpose that many argue has fueled mass incarceration in the states. And all too often, the COPS Hiring Program supports unconstitutional policing practices and subsidizes failed police departments. For example, from fiscal year 2009–2013 the COPS Office awarded more than \$10.2 million in grants to the Baltimore Police Department without ensuring that the police department used these funds in compliance with nondiscrimination laws, such as Title VI of the Civil Rights Act of 1964.<sup>9</sup> During that period, the Civil Rights Division found that the Baltimore police were engaging in a pattern or practice of conduct that violates the Constitution or federal law including, unconstitutional stops, searches, and arrests; constantly using excessive force; and intentionally discriminating against African-Americans.<sup>10</sup>

### ***Byrne-JAG Program***

We support suspension of funding for the Byrne-JAG program until an oversight hearing is done on this program by the House Judiciary Committee. We have seen the bad incentives the Byrne-JAG program provides to local law enforcement. Too often, Byrne-JAG encourages state and local police to focus on arrests rather than crime reduction, incarceration of low-level drug offenders rather than treatment of addiction, and commando policing rather than community policing.<sup>11</sup> While the Obama Administration made some progress in reforming outcome measures for Byrne through administrative actions, the underlying statutory authorization is broken and serves to further an outdated view of criminal justice.

States and localities can use their Byrne-JAG funds for a wide variety of purposes in the criminal justice system, but in practice they use their money for arrests and prosecutions. In fiscal year 2016, grantees used Byrne-JAG funds to pay all or part of the salaries of 23,001 people in prosecutors' offices but only 12 people in public defenders' offices.<sup>12</sup> Like the COPS Hiring Program, the Byrne-JAG program serves to subsidize unconstitutional policing practices.

For example, the Byrne program awarded close to \$50,000 for the City of Ferguson, MO from fiscal year 2009–2012<sup>13</sup> and over \$6.8 million for the City of Baltimore from fiscal year 2008–2017.<sup>14</sup> In Ferguson, the city used their Byrne-JAG funds for a taser equipment project.<sup>15</sup> The Civil Rights Division found that Ferguson used tasers "in a manner that is unconstitutional, abusive, and unsafe,"<sup>16</sup> often tasing individuals who are already handcuffed or in a jail cell; in one case, going so far as to tase a man, in his chest, in a locked jail cell.<sup>17</sup> Baltimore, too, used Byrne-JAG funding to purchase tasers along with other military-style equipment.<sup>18</sup> As part of their finding that the city engaged in a pattern or practice of violating its citizens' civil rights, the Civil Rights Division discussed the police departments' use of tasers extensively and "found that on many occasions, the officers' unreasonable use of force involved use of tasers in drive-stun mode".<sup>19</sup> The Byrne program, which was last authorized in fiscal year 2005, badly needs reform, but until then, appropriators shouldn't let the program continue on autopilot.

### ***Drug Enforcement Administration/OCEDTF***

The President's request proposes a \$12 million increase for the DEA, and also proposed a \$9.5 million cut to the Organized Crime and Drug Enforcement Task Force (OCEDTF) program, which primarily funds DEA agents and U.S. Attorneys focused on drug enforcement. We don't believe Congress should fund these enforcement-only approaches to addressing drug abuse and the overdose epidemic at above the Trump Administration's request level. As the lead law enforcement agency for drug enforcement at the national level, the DEA is emblematic of how the drug war has been a devastating failure.

The agency approaches drugs from a purely criminalization standpoint, under the misguided belief that the U.S. can reduce drug use through arrest and incarceration. Its approach is heavy-handed, ineffective, unscientific, and deeply damaging to communities in this country, particular communities of color who bear the negative impact of the drug war more than others do. It has used its power to oppose all drug policy changes that represent a shift from the drug war model in any way, such as rescheduling drugs, and legalizing marijuana, and reducing harsh drug sentences.<sup>20</sup> In short, the DEA is the lead entity executing the war on drugs. If we are ever to treat drugs as a health issue, not a criminal issue, then the DEA's enforcement activities must be suspended until an oversight hearing is done on this program by the House Judiciary Committee.

The federal government has an important role to play in overseeing law enforcement agencies throughout the country and can use limited resources in a smart way that benefits public safety and promotes constitutional policing.

If you have any questions or comments, please contact Kanya Bennett, American Civil Liberties Union, [kbennett@aclu.org](mailto:kbennett@aclu.org) or Michael Collins, Drug Policy Alliance, [mcollins@drugpolicyalliance.org](mailto:mcollins@drugpolicyalliance.org).

Sincerely,

American Civil Liberties Union  
Drug Policy Alliance  
NAACP  
The Sentencing Project

cc: Members of U.S. House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies

---

<sup>1</sup> Danielle Kaeble and Mary Cowhig, *Correctional Populations in the United States, 2016* (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2018), available at [www.bjs.gov/content/pub/pdf/cpus16.pdf](http://www.bjs.gov/content/pub/pdf/cpus16.pdf).

<sup>2</sup> U.S. Department of Justice, Office of Justice Programs, *Bureau of Justice Statistics, Prisoners in 2016*. See, page 13 at <https://www.bjs.gov/content/pub/pdf/p16.pdf>.

<sup>3</sup> Timothy A. Hughes and Doris James Wilson, *Reentry Trends in the United States* (Washington, DC: U.S. Department of Justice, Bureau of Justice Assistance, 2002), available at [www.bjs.gov/content/pub/pdf/reentry.pdf](http://www.bjs.gov/content/pub/pdf/reentry.pdf).

<sup>4</sup> Pew Center on the States, *State of Recidivism: The Revolving Door of America's Prisons* (Washington, DC: The Pew Charitable Trusts, 2011), available at [www.pewtrusts.org/~media/legacy/uploadedfiles/pcs\\_assets/2011/pewstateofrecidivism.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2011/pewstateofrecidivism.pdf).

<sup>5</sup> "Drug Overdose Deaths", U.S. Department of Health and Human Services, Centers for Disease Control and Prevention accessed March 27, 2019, <https://www.cdc.gov/drugoverdose/data/statedeaths.html>.

<sup>6</sup> U.S. Department of Justice, *Principles and Procedures for Civil Consent Decrees and Settlement Agreements with State and Local Governmental Entities*, <https://www.justice.gov/opa/press-release/file/1109681/download>

<sup>7</sup> Charles Colson Task Force on Federal Corrections, *Transforming Prisons, Restoring Lives: Final Recommendations of the Charles Colson Task Force on Federal Corrections* (Washington, DC: Urban Institute, 2016). <http://www.urban.org/sites/default/files/publication/77101/2000589-Transforming-Prisons-Restoring-Lives.pdf>.

<sup>8</sup> Human Rights Watch, *Punishment and Prejudice: Racial Disparities in the War on Drugs* (2000). <https://www.hrw.org/reports/2000/usa/index.htm>

<sup>9</sup> U.S. Department of the Treasury, Bureau of the Fiscal Service, *USASpending.gov Database*. [https://files.usaspending.gov/generated\\_downloads/all\\_prime\\_awards\\_subawards\\_20190326133042458231.zip](https://files.usaspending.gov/generated_downloads/all_prime_awards_subawards_20190326133042458231.zip).

- 
- <sup>10</sup> U.S. Department of Justice, Civil Rights Division, *Investigation of the Baltimore City Police Department*, Washington, DC, 2016.  
<https://www.justice.gov/crt/file/883296/download>.
- <sup>11</sup> Inimai M. Chettiar, Lauren-Brooke “L.B.” Eisen, Nicole Zayas Fortier, and Timothy Ross, *Reforming Funding to Reduce Mass Incarceration*, (New York: Brennan Center for Justice, 2013). <https://www.brennancenter.org/publication/reforming-funding-reduce-mass-incarceration>.
- <sup>12</sup> U.S. Department of Justice, Bureau of Justice Assistance, *Justice Assistance Grant Program FY 2016 Activity Report*, Washington, DC, 2018.  
[https://www.bja.gov/Programs/JAG/JAG-FY2016-Activity-Report\\_508.pdf](https://www.bja.gov/Programs/JAG/JAG-FY2016-Activity-Report_508.pdf).
- <sup>13</sup> U.S. Department of the Treasury, Bureau of the Fiscal Service, *USASpending.gov Database*.  
[https://files.usaspending.gov/generated\\_downloads/all\\_prime\\_awards\\_subawards\\_20190326141703012212.zip](https://files.usaspending.gov/generated_downloads/all_prime_awards_subawards_20190326141703012212.zip).
- <sup>14</sup> U.S. Department of the Treasury, Bureau of the Fiscal Service, *USASpending.gov Database*.  
[https://files.usaspending.gov/generated\\_downloads/all\\_prime\\_awards\\_subawards\\_20190326141935414314.zip](https://files.usaspending.gov/generated_downloads/all_prime_awards_subawards_20190326141935414314.zip).
- <sup>15</sup> U.S. Department of Justice, Bureau of Justice Assistance, *Detailed information for award 2012-DJ-BX-0750*.  
<https://external.ojp.usdoj.gov/selector/awardDetail?awardNumber=2012-DJ-BX-0750&fiscalYear=2012&applicationNumber=2012-H3339-MO-DJ&programOffice=BJA&po=BJA>.
- <sup>16</sup> U.S. Department of Justice, Civil Rights Division, *Investigation of the Ferguson Police Department*, Washington, DC, 2015, 29.  
[https://www.justice.gov/sites/default/files/crt/legacy/2015/03/04/ferguson\\_findings\\_3-4-15.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2015/03/04/ferguson_findings_3-4-15.pdf).
- <sup>17</sup> *Ibid.*, 40.
- <sup>18</sup> U.S. Department of Justice, Bureau of Justice Assistance, *Detailed information for award 2010-DJ-BX-0705*.  
<https://external.ojp.usdoj.gov/selector/awardDetail?awardNumber=2010-DJ-BX-0705&fiscalYear=2010&applicationNumber=2010-H8896-MD-DJ&programOffice=BJA&po=BJA>.
- <sup>19</sup> U.S. Department of Justice, *Investigation of the Baltimore City Police Department*, 81.
- <sup>20</sup> Drug Policy Alliance. *The Scandal-Ridden DEA: Everything You Need to Know* (April 2015).  
[http://www.drugpolicy.org/sites/default/files/DEA\\_Scandals\\_Everything\\_You\\_Need\\_to\\_Know\\_Drug\\_Policy\\_Alliance.pdf](http://www.drugpolicy.org/sites/default/files/DEA_Scandals_Everything_You_Need_to_Know_Drug_Policy_Alliance.pdf).